

Claims 23-28 and 30-36 stand rejected under 35 U.S.C. § 102(e) as being anticipated by *Rose* '167. Among other things, the Examiner states that *Rose* teaches at least partially reestablishing a fire rating of the barrier.

The Applicants respectfully traverse the rejection. "A claim is anticipated only if each and every element as set forth in the claims is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP § 2131. *Rose* does not teach, show, or suggest the present invention. *Rose*'s title, abstract, background, summary, detailed description, and claims *all* recite *suppressing* a fire. Further, the fire that is being alleged suppressed is *within* the electrical box.

Establishing and reestablishing the fire rating of a barrier is independent of suppressing a fire. See Declaration of Mr. Randy Clark. The triad of fire protection includes the separate categories of detection, compartmentalization, and suppression. Compartmentalization is achieved by the erection of barriers such as walls to separate areas of occupancy. It is required by the various Codes to reestablish the fire rating of the barrier that has been breached, for example, where the breach was caused by inserting electrical boxes and other equipment into the barrier for insurance liability and other purposes. Suppression on the other hand requires a fire to suppress. *Rose* teaches suppression, not compartmentalization with a fire rating.

There is not a hint of reestablishing the fire rating of a barrier, such as a wall, in *Rose*. A fire rating is a specific term of art for materials to withstand a fire for a specific time and for a specific temperature and is dependent on several factors, as would be known to those with ordinary skill in the art, such as thickness of the barrier, square footage of the contained room or area, occupancy, proximity to explosive materials, and so forth. As described in the

specification, the fire rating is established and mandated by a number of codes and regulations, including the ASTM and UL standards.

In contrast to *Rose*, the barrier recited in the present invention is designed and build to have a certain fire rating from one area on one side of the barrier to another area on another side of the barrier. *Rose* is concerned with suppressing an electrical fire *within* the box. The present invention is concerned with the defect (loss of fire rating) in the barrier (wall and so forth) *caused* by the box. *Rose* does not teach, show, or suggest any fire rating of the barrier or even any barrier to a fire located outside of the box. The reference does not anticipate or would it be obvious from *Rose* to do so. The Examiner is respectfully requested to withdraw the rejection.

Claim 29 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Rose* in view of Applicant's own admission. The Examiner admits that *Rose* does not disclose fire resistant insulative material and states that the specification states that other fire resistant materials are known.

The Applicants respectfully traverse the rejection. Claim 29, dependent on independent claim 23 discussed above, is believed to be allowable for that and other reasons. The Examiner is respectfully requested to withdraw the rejection.

In conclusion, the references cited by the Examiner, neither alone nor in combination, teach, show or suggest the present invention. Therefore, it is believed that the rejections made by the Examiner have been obviated, and Applicants respectfully requests that the same be withdrawn. Allowance of the remaining claims, in addition to the already allowed claims, is therefore respectfully requested.

Respectfully submitted,

Date: _____

8/13/02

D. Brit Nelson

D. Brit Nelson
Registration No. 40,370
LOCKE LIDDELL & SAPP LLP
Suite 3400
600 Travis Street
Houston, Texas 77002-3095
713-226-1361
713-223-3717 (Fax)
Attorneys for Applicants